

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ELIZABETH HORTON,)
)
)
Plaintiff,)
)
)
v.)
)
)
DON WILLIAMS, et al,)
)
Defendants.)

CASE NO: 2:06CV526-MHT

**DEFENDANT ALABAMA MEDICAID AGENCY'S
MOTION TO DISMISS**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Alabama Medicaid Agency (“Medicaid”) moves the Court to dismiss the Complaint against it. In support of this motion, Medicaid respectfully states as follows:

1. Although the Summons and Complaint was served by certified mail on Medicaid on June 21, 2006, the document was misdirected, and the undersigned counsel only learned of the matter on July 18, 2006.
2. The Complaint fails to state a claim upon which relief can be granted against Medicaid. The Plaintiff names Medicaid in the style of the case as a defendant; however; in the body of the Complaint, under “Jurisdiction and Venue”, she outlines each defendant in numbers 4 through 6, and does not name or identify the Alabama Medicaid Agency. Further, nowhere in the

Complaint is there any allegation against Medicaid. Plaintiff identifies Medicaid's role in the facts but never states that Medicaid took any active role in the alleged wrongdoing against her. Under Count One, she does not name Medicaid as depriving her "civil rights under color of state law denial of due process". Under Count Two, she does not name Medicaid as participating in "False Arrest False Imprisonment". Finally, under Count Three, she does not identify Medicaid as a participant in the alleged Malicious Prosecution.

3. Only the Alabama Medicaid Agency as an entity is named as a defendant. No officer, agent or employee of Medicaid is named. The Alabama Medicaid Agency, as an agency of the State of Alabama, is entitled to the protections of sovereign immunity pursuant to the Eleventh Amendment to the United States Constitution and § 14 of the Alabama Constitution of 1901.
4. This Honorable Court lacks subject matter jurisdiction.

WHEREFORE, premises considered, the Alabama Medicaid Agency respectfully moves this Court to dismiss the Complaint against it based on the grounds stated above.

Respectfully submitted,

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ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that I have, this the 20th day of July, 2006, electronically filed the foregoing with the Clerk of Court using the CM/ECF, which will send notification of this filing to the following:

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